

CONSUMER PROTECTION LEGISLATION AMENDMENT BILL 2018

Committee

Resumed from an earlier stage of the sitting. The Chair of Committees (Hon Simon O'Brien) in the chair; Hon Alannah MacTiernan (Minister for Regional Development) in charge of the bill.

Clause 67: Section 47 amended —

Committee was interrupted after the clause had been amended.

The CHAIR: Minister, I think you have a further amendment you may wish to move.

Hon Michael Mischin: Before we do that, I still have questions to ask about the scheme.

Hon ALANNAH MacTIERNAN: I have a further amendment, and I have completed my answers in relation to the other matters.

Hon Michael Mischin: I have not completed my questions.

Hon ALANNAH MacTIERNAN: I have answered the questions; I have provided the explanation for why we have come to the point that we have come to.

Amendment 5/67 is on the supplementary notice paper standing in my name. There is a very similar one from Hon Rick Mazza at 7/67. To get the ball rolling, I propose to move amendment 5/67. This is a provision to make clear the protections provided to the landlord. I move —

Page 39, line 26 to page 40, line 10 — To delete the lines and substitute —

- (c) unless the lessor agrees otherwise in writing, the tenant must remove the item from the wall when the tenant vacates the premises and either —
 - (i) restore the wall to its original condition (taking into account fair wear and tear); or
 - (ii) compensate the lessor for any reasonable expenses incurred by the lessor in doing that restoration;
- and
- (d) the cost of affixing the item to the wall, removing it and restoring the wall to its original condition must be borne by the tenant; and
- (e) if the tenant causes damage to the premises when affixing or removing the item or restoring the wall to its original condition —
 - (i) the tenant must notify the lessor in writing that damage has been caused to the premises; and
 - (ii) the lessor may require the tenant to repair the damage and restore the premises to their original condition (taking into account fair wear and tear) or compensate the lessor for the reasonable expenses incurred in doing the repair and restoration.

The only difference between the provision that Hon Rick Mazza has proposed and this amendment is that we have taken into account “fair wear and tear”, because, generally speaking in tenancy legislation, the restoration depends on the concept of fair wear and tear. If someone has been renting a property for 10 years, there is a certain amount of change and deterioration of a property that is seen to have taken place basically by the effluxion of time and the normal activities within that, and that is not compensable. We will not push this too hard, but certainly our view is that by having this provision in the legislation, it will be clearer and more in line with the other provisions in the tenancies legislation that deal with the general responsibilities of a tenant to restore property. The concept of fair wear and tear is entrenched in those general provisions. If we leave it out, the problem, from that point of view, is that it leaves uncertainty, and more uncertainty in these areas will not benefit either party. We have really taken up the general principles that Hon Rick Mazza wants, and that is to detail the responsibility of the tenants at the end of the tenancy, but doing it in such a way that it is compatible with these standard provisions.

Hon RICK MAZZA: I thank the minister for this amendment, which improves what is in the bill. I know some of that work was done earlier in the year around some concerns I had, which makes a couple of my further amendments redundant when it comes to things in writing. However, I have some issues with the bracketed phrase in paragraph (c)(i) and also (e)(ii), “taking into account fair wear and tear”. This is quite different from the fair wear and tear that occurs in a rental property. We are talking about drilling holes into a wall, removing those items

and then having to repair those items. Fair wear and tear generally is wear on carpets or paintwork over time, but here we are talking about the modification of the premises. Halfway down the first page of the Real Estate Institute of Western Australia's letter of 1 November, of which I think the minister has a copy, it states —

However, REIWA members raised concerns over stipulations for tenants to rectify or cover the cost to rectify any damage as a result of affixing furniture. REIWA members believe that 'damage' would not necessarily cover the holes left in the walls once the furniture is removed at the end of the tenancy.

REIWA would therefore recommend the Bill dictates that tenants restore the wall to its original condition, unless told otherwise by the lessor.

That letter is from November last year. When we received an indication that the minister was going to move this amendment, I contacted REIWA again to find out what its position would be. In response to an email sent by one of my staff members, I received an email from REIWA on 17 May this year, which states —

REIWA views the holes left in the wall from affixing furniture not as wear and tear. This would be very similar situation to if a person installed cameras or safety screen and removed them when they left as permitted in the new FDV legislation.

In the FDV amendment, the tenant is required to return to original condition unless instructed otherwise by the landlord.

Those are a couple of examples of REIWA supporting returning the premises to its original condition. In fact, the Residential Tenancies Legislation Amendment (Family Violence) Act that we passed through this place either late last year or early this year inserted section 47(5)(e), which states —

the tenant must restore the premises to their original condition ...

I think for consistency the amendment moved by the minister should exclude taking into account fair wear and tear. I move —

To amend the amendment as follows —

In proposed paragraphs (c)(i) and (e)(ii) in each line where it occurs, to delete —
(taking into account fair wear and tear)

The CHAIR: The question is that the words proposed to be deleted be deleted. Minister, if you want to seek the call.

Hon ALANNAH MacTIERNAN: I think it is important that we move this on. I understand Hon Rick Mazza's comment. It is a pretty fine point and we do not want to delay this important legislation any longer. In the interests of moving on this debate and because a reasonable argument has been made, I am happy to accept that amendment.

Hon MICHAEL MISCHIN: I am a little confused. I understand that amendments 5/67 and 7/67 are the same except for the inclusion of words "(taking into account fair wear and tear)". Why not simply oppose or have the minister withdraw amendment 5/67 and move on to 7/67 and pass that amendment?

Hon Alannah MacTiernan: If we can make progress and that is a quicker way of doing it, I will remove that amendment.

Hon MICHAEL MISCHIN: I would have thought it was the sensible way of doing it.

Hon ALANNAH MacTIERNAN: I seek leave to withdraw the amendment.

Several members interjected.

The CHAIR: Order! We are dealing with an amendment moved by Hon Rick Mazza, and we are all keen to make progress. The amendment to the amendment stands in the name of Hon Rick Mazza. If he wants to seek leave to amend it, having just moved it, that is up to him. If not, I am going to put the question on the amendment to the amendment.

Amendment on the amendment put and passed.

The CHAIR: That means we now have an amendment still standing in the name of the minister; however, in effect, it is in the same wording as the amendment standing in the name of Hon Rick Mazza at 7/67, which now, of course, is redundant. We are now dealing with the amendment of the Minister for Regional Development at 5/67, as amended.

Amendment, as amended, put and passed.

The CHAIR: Hon Rick Mazza, I think all your other amendments fall away, because I am going to have to report progress.

Progress reported and leave granted to sit again, pursuant to standing orders.